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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,458	01/16/2004	Christian Knopfle	60,500-116	7719

27305 7590 09/09/2005

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EXAMINER

REIS, TRAVIS M

ART UNIT PAPER NUMBER

2859

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/759,458	KNOPFLE ET AL.	
	Examiner	Art Unit	
	Travis M. Reis	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 & 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moe (U.S. Patent 2981005) in view of Hite (U.S. Patent 3230628).

Moe discloses a measuring device for bolts, as shown in Figures 1-3, the device comprising a surface (10), multiple openings (14—28) with different opening cross-sections, a length measuring scale (32—36) defined at each of the openings for measuring the bolts; a limit stop (12) associated with each of the openings for cooperating with a received bolt, the opening and the associated limit stop having a selectivity with respect to the shaft diameter of the bolt which can be received in the opening; wherein the opening has an open end in the area of a face of the device, said face running essentially vertically to the surface; wherein the limit stop is arranged in the region of the face or is formed from the face; wherein the limit stop is formed to cooperate with the underside of a bolt head; wherein the limit stop has, opposite each other, two limiting elements projecting upwardly from the surface at a transverse angle relative to the associated opening, the two limiting elements having a spacing between each other that defines the selectivity; and wherein the opening has an open angle range with reference to the surface, with respect to an axis of symmetry which runs along its axial extension; wherein the bone screw has differently formed or dimensioned transitions from screw shaft to a screw head.

Moe does not disclose receiving grooves defined in the surface for receiving bone screws.

With respect to the receiving grooves defined in the surface for receiving bone screws: Hite discloses a gauge (10) for measuring orthopedic screws (21) with a receiving groove (12) defined in the surface of the gauge for receiving said screws in order to form a matrix in which the screw may be inserted readily to provide an unquestionable gauge of length along the scale (col. 2 lines 15-20). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to modify the measuring device disclosed by Moe by providing receiving grooves defined in the surface for receiving bone screws as taught by Hite in order to form a matrix in which the screw or original bolt may be inserted readily to provide an unquestionable gauge of length along the scale.

With respect to the specific open angle range of the receiving grooves, i.e., between 20 and 240 degrees and less than approximately 175 degrees: Moe as modified by Hite disclose a measuring device for measuring bone screws of different shaft diameters, said device having receiving grooves having an open angle range with reference to the surface, with respect to an axis of symmetry which runs along their axial extension. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to provide the grooves disclosed by Moe as modified by Hite with an open angle of between 20 and 240 degrees, and less than approximately 175 degrees, as claimed by applicant, in order to properly support the bone screws.

With respect to the preamble of the claims 1-6 and 8-11: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness

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upon the introductory clause. **Kropa v. Robie**, 88 USPQ 478 (CCPA 1951).

3. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moe & Hite as applied to claims 1-6 & 8-11 above, and further in view of DiCarlo (U.S. Patent 5180388).

Moe as modified by Hite disclose all of the instant claimed invention as stated above in the rejection of claims 1-6 & 8-11 but do not disclose a bone drill, information about a current drilling depth attached to the drill and corresponding information on the measuring device, and the information about the drilling depth including a color scale.

With respect to the bone drill, the information about a current drilling depth attached to the drill and corresponding information on the measuring device, and the information about the drilling depth including a color scale: DiCarlo discloses a device, as shown in Figure 1, having a bone drill (30) insertable to different depths into a bone (40) wherein information about a current drilling depth is attached to the bone drill and corresponding information (22) is provided on a device (20), and wherein information about the drilling depth includes a color scale (col. 2 lines 66-68 and col. 3 lines 1-5). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add a bone drill as taught by DiCarlo to the device disclosed by Moe as modified by Hite in order to provide the user with an accessible bone drill to be used during surgery. Once the modification is made, i.e., the bone drill is located on a surface of the measuring device disclosed by Moe as modified by Hite, the information will be on the measuring device.

Response to Arguments

4. Applicant's arguments with respect to claims 1-6 & 8-14 have been considered but are moot in view of the new ground(s) of rejection.

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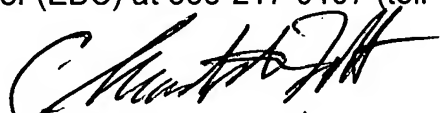
Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Travis M Reis
Examiner
Art Unit 2859


Diego Gutierrez
Supervisory Patent Examiner
Tech Center 2800

tmr
September 2, 2005

CHRISTOPHER W. FULTON
PRIMARY EXAMINER